

REMARKS

The present Amendment is in response to the Examiner's Office Action mailed April 14, 2009. By this paper, claims 1, 3, 4, 15, and 19 are amended and no claims are added or cancelled. Claims 2, 6-14, 18 and 20-40 were previously withdrawn from consideration. Claims 1, 3-5, 15-17, and 19 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

General Considerations

Applicants note that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicants,

of additional or alternative distinctions between the claims of the present application and any references cited by the Examiner, and/or the merits of additional or alternative arguments.

Rejection Under 35 U.S.C. §112, ¶2

The Office Action rejects claims 1, 3-5, 15-17, and 19 under 35 U.S.C. §112, ¶2 for various clarity and antecedent basis issues listed on pages 2-5 of the Office Action. In response, Applicants have amended the claims as shown above to correct these issues. Applicants respectfully request that this rejection be withdrawn.

Rejection Under 35 U.S.C. §101

Claims 1, and 3-5 are rejected under 35 U.S.C. §101 as not falling within one of the four statutory categories of invention. In response, Applicants have amended claim 1 to explicitly tie the claim to a machine. Applicants respectfully request that this rejection be withdrawn.

Rejection under 35 U.S.C §103(a)

The Office Action rejects claims 1, 3, and 5 under 35 U.S.C §103(a) over *Yu et al.* (U.S. Patent No. 6,070,248) in view of *Schlater et al.* (U.S. Patent No. 6,148,420) and rejects claim 4 under 35 U.S.C §103(a) over *Yu et al.* in view of *Schlater et al.* in further view of *Mayer* (U.S. Patent No. 7,042,908). The Office action rejects claims 15-17 under 35 U.S.C §103(a) over *Strong et al.* (U.S. Patent No. 6,335,931) in view of *Yu et al.* in further view of *Schlater et al.* and rejects claim 19 under 35 U.S.C §103(a) over *Strong et al.* in view of *Yu et al.* in view of *Schlater et al.* and in further view of *Mayer*. Under 35 U.S.C §103(a), "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." According to MPEP §2142, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." Finally, MPEP 2141.III notes that:

"The key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been*

obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that ***"[R]jections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."*** KSR, 550 U.S. at ___, 82 USPQ2d at 1396." (emphasis added)

Applicants do not necessarily agree with Office Action's statements regarding at least (1) whether the cited reference(s) disclose each and every element recited in the claim, (2) whether the cited reference(s) teach the combination presented in the claim, (3) whether the cited reference(s) disclose or inherently include the features that the Office Action asserts that the reference(s) include and (4) whether the reference(s) or any other source provides a reason to combine the teachings of the reference(s). Nevertheless, in the interests of expediting prosecution, Applicants herein substantially amend claims 1 and 15.

For example, amended claim 1 recites "A method for defining a common time base suitable for use in connection with the operation of a multi-link protocol analyzer in a multi-protocol communications system, the method comprising:

determining a first protocol clock frequency at a first link analyzer of the multi-link protocol analyzer, the first protocol clock frequency being associated with a first communications protocol associated with the multi-protocol communications system;

determining a second protocol clock frequency at a second link analyzer of the multi-link protocol analyzer, the second protocol clock frequency being associated with a second communications protocol associated with the multi-protocol communications system, wherein the second protocol clock frequency is unrelated to the first protocol clock frequency; and

using the first and second protocol clock frequencies as a basis for determining a reference clock frequency, where the reference clock frequency is different from each of the first and second protocol clock frequencies."

Support for such amendments is found throughout the specification, but particularly in Figures 5 and 6 and paragraphs 57-64. Accordingly, amended claim 1 recites that a first protocol frequency clock is determined that is associated with a first communications protocol. A second protocol frequency clock that is associated with a second communication protocol is also determined. As shown for example and without limitation in Figure 6, the two protocol clock

frequencies are unrelated to each other. That is, the protocol clock frequencies are not dependent on a single base frequency.

Amended claim 1 further requires that the unrelated first and second protocol clock frequencies be used to determine a reference clock frequency. That is, the resulting reference clock frequency is derived from the first and second protocol clock frequencies, but has a different frequency from the first and second protocol frequencies.

In sharp contrast, the Office Action has not shown that cited art teaches the elements of amended claim 1. For example, *Yu*, which is primarily used to reject the claims, teaches a clock signal generator that produces a reference signal. As shown in Figure 3 of *Yu*, the clock generator includes various frequency dividers. These dividers all receive a single base clock signal 302, either from the computer 102 that includes the peripheral device 112 or from another computer of the system such as computers 104, 106, or 108. That is, as mentioned in column 3, line 66- column 4, line 5, the base clock frequency is from a single component of the system. The dividers then divide the base clock signal to produce various frequencies. As discussed at column 4, lines 20-23 and the abstract, the divided frequencies all related to the base frequency as these frequencies are the base frequency divided by a factor. The base clock frequency 304 is then used to determine the divided clock frequency that should be used.

Accordingly, the system of *Yu* is quite different from claim 1. For example, two unrelated protocol clock frequencies are not used to determine or derive a reference frequency in *Yu*. Rather, as explained, a single base frequency from a single component is divided to provide various divided frequencies that are all related to the single base frequency. Thus, the reference clocks of *Yu* cannot be different from a first and second protocol clock frequency since they are derived from the single base frequency.

Schlater does not teach or suggest the elements of claim 1 missing in *Yu* and is not cited by the Office Action as teaching such. Rather, *Schlater* is used to show a multi-protocol communication system that can support various communication protocols. Even assuming this characterization is true, *Schlater* still does not teach or suggest that a first and second protocol frequency clocks that are unrelated are used to determine or derive a reference frequency that is

different from the first and second clock frequencies. Accordingly, *Schlater* does not cure the deficiencies of *Yu*.

In addition, Applicants note that the Office Action has not shown an ***articulated reasoning with some rational underpinning*** as to why one of ordinary skill in the art would combine *Yu* and *Schlater*. On page 7, the Office Action merely states that combining the teachings would allow the *Yu* system to correlate in time events occurring in different components of a system. However, the *Yu* is not concerned with time correlation. Rather, *Yu* is concerned with providing a stable reference clock based on a single base frequency. Further, since the base frequency is used to help determine which of the divided reference clocks are selected, imputing more than a single base frequency into the system to determine the frequency as is done in the pending claims would destroy the utility of the *Yu* system. Thus, one of skill in the art would not be motivated to modify *Yu* in the manner stated in the Office Action.

Accordingly, *Yu* and *Schlater*, either singularly or in combination, do not teach or suggest the elements of claim 1. The other art of record does not correct the deficiencies of *Yu* and are not cited by the Examiner as teaching such.

Regarding amended claim 15, Applicants note that amendments similar to those made in claim 1 have been made in this claim. As noted in the Office Action on page 11, *Strong* does not teach or suggest a reference clock as recited in claim 15. Instead, the Office Action relies on *Yu* to show the recited reference clock. However, as discussed above in relation to claim 1, *Yu* does not teach or suggest the reference clock as recited in amended claim 1. As mentioned, *Schlater* and the other art of record do not cure the deficiencies of *Yu* and are not recited by the Office Action as teaching such. Accordingly, *Strong*, *Yu* and *Schlater*, either singularly or in combination, do not teach or suggest the elements of claim 15.

Therefore, the Applicant respectfully requests that the rejection of claims 1 and 15 be withdrawn at least for the reason that the references relied upon do not teach or suggest the recited elements. Claims 3-5 depend from claim 1 and claims 16-17 and 19 depend from claim 15. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, the Applicant

respectfully requests that the rejections of claims 3-5, 16-17, and 19 be withdrawn at least for the same reasons as claims 1 and 15.

Charge Authorization

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

CONCLUSION

In view of the foregoing, Applicant believes the claims as presently pending are in allowable form and that every issue raised by the Office Action has been addressed. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorneys.

Dated this 13th day of July, 2009.

Respectfully submitted,

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